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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,525	11/19/2003	Toshiki Maeda	08009.0008	4709

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EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/715,525	Applicant(s) MAEDA ET AL.	
	Examiner Jane Rhee	Art Unit 1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/16/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Rejections Repeated

1. The 35 U.S.C. 102(b) rejection of claims 1-3 as being anticipated by Sunagawa et al. has been repeated for the reasons previously made in office action 11/2/2005.

Response to Arguments

2. Applicant's arguments filed 4/20/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that Sunagawa fail to teach wherein the lithium site occupancy rate is 98% or greater, Sunagawa discloses the same active material desired by the applicant which is expressed by the general formula $\text{LiX}(\text{Ni}_{1-y}\text{Co}_y)_{1-x}\text{MzO}_2$ (where $0.98 \leq x \leq 1.10$, $0.05 \leq y \leq 0.4$, $0.01 \leq z \leq 0.2$, M at least one element selected from the group of Al, Zn, Ti and Mg) (page 2 lines 55-57) , therefore it is inherent that according to the Rietveld analysis, the Li site occupancy rate for the Li site in the crystal is 98% or greater. Applicant argues that the comparative examples and the examples shown in the specification have the same composition but not necessarily have the same Li site occupancy rate. However, once a reference teaching product appearing to be substantially identical is made in the basis of a rejection, and the examiner presents evidence or reasoning tending to show inherency, the burnden shifts to the applicant to show an unobvious difference. MPEP 2112 section V. Applicant has not shown an unobvious difference between the prior art and applicant's invention. Applicant described the difference between the comparative examples and the

Art Unit: 1745

examples shown in the specification but did not describe the difference between applicant's invention and the prior art.

Applicant further argues that Sunagawa fail to disclose controlling the manufacturing process of its lithium composite oxide therefore would not have the same Li site occupancy rate. Applicant did not claim that the active material is created by controlling the manufacturing process of its lithium composite oxide. Also, data needs to be available that controlling the manufacturing process of its lithium composite oxide of applicant's invention differ from the lithium composite oxide of the prior art. Applicant states in the specification that comparative examples 4 and 5 that the nickel concentration was controlled thereby providing particles in the range of 4.8-16 μ m (page 12). Sunagawa discloses the same material desired by the applicant within the particle range desired by the applicant and since, applicant teaches that controlling the nickel concentration provides the particles to be in the range of 4.8-16 μ m thus the Li site occupancy rate for Li sites would inherently be 98% or greater as shown in applicant's specification in table 1, comparative examples 4 and 5, then Sunagawa inherently discloses the same Li site occupancy rate for Li sites.

As to the active material subjected to a washing process, the difference between the specific surface area of the active material before the washing process and after the washing process is 1.07m²/g or less, Applicant argues that before and after the recited washing process is a property of the active material. Sunagawa discloses the same active material desired by the applicant which is expressed by the general formula $\text{LiX}(\text{Ni}_{1-y}\text{Co}_y)_{1-x}\text{MzO}_2$ (where $0.98 \leq x \leq 1.10$, $0.05 \leq y \leq 0.4$, $0.01 \leq z \leq 0.2$, M at least one

element selected from the group of Al, Zn, Ti and Mg) (page 2 lines 55-57) and that the specific surface area is between 0.15 to 2.0m²/g (page 3 lines 20-21), therefore it is inherent that the difference between the specific surface area of the active material before the washing process and after the washing process is 1.07m²/g or less.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

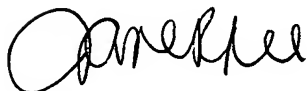
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1745

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jane Rhee
June 27, 2006



PATRICK JOSEPH RYAN
SUPERVISORY PATENT EXAMINER